

Page 277

1 performed.

2 Q. What procedures do you have in place
3 to prevent slamming?

4 A. Slamming is not a software issue.

5 Procedures that are in place with the industry
6 are that anytime a RespOrg change comes in, it
7 has to be signed off on, as we went through
8 before, based on the industry guidelines.

9 Q. That's your service desk, right?

10 A. Yes.

11 Q. You don't watch after that, correct,
12 at DSMI?

13 A. Don't watch out for what?

14 Q. The service desk.

15 A. We provide day-to-day oversight for
16 them.

17 Q. For the service desk?

18 A. Yes.

19 Q. I thought that contract was with the
20 RBOCs.

21 A. It is.

Page 278

1 Q. And that you had limited involvement
2 there.

3 A. We do.

4 Q. You do have limited involvement?

5 A. Right.

6 Q. Okay. I notice in your tariff -- does
7 a RespOrg pursuant to the terms of the SMS/800
8 tariff have any obligations to keep its
9 subscriber information confidential? The
10 RespOrg?

11 A. Do they have to keep their subscriber
12 information confidential?

13 Q. Yes.

14 A. I don't know specifically.

15 Q. How about paragraph 2.3.1? Do you
16 have that memorized?

17 A. No.

18 Q. I'm sorry. This is such a bulky thing
19 that I only have one copy. May I show you what
20 I'm looking at here?

21 MR. LUKAS: I have a copy.

Page 279

1 BY MR. SMITH:

2 Q. 2.3.1 on page 24.

3 A. Thank you.

4 Q. Do you see at the bottom of that page,

5 which is under the heading "General
6 Responsibilities" which is referring to RespOrgs?

7 A. Uh-huh.

8 Q. It says, "Treat all subscriber
9 information as confidential unless otherwise
10 instructed by the subscriber."

11 A. Uh-huh, yes.

12 Q. In your experience as president of
13 DSMI, have you ever had occasion to apply this
14 provision of the tariff?

15 A. Not to my knowledge.

16 Q. Did you consider paragraph 2.3.1 of
17 the tariff in your drafting of the form that you
18 required Beehive to submit for access to the 629
19 numbers in your January 2000 letter to Mr. Art
20 Brothers?

21 A. I don't remember specifically.

Page 280

1 Q. You don't remember whether you
2 considered this part of the tariff?

3 A. Correct.

4 Q. Would you be concerned if you were
5 engaged in conduct that invited others to
6 disregard or breach the tariff? By "tariff," I
7 mean the SMS/800 tariff.

8 A. I'm sorry. Say that again.

9 Q. Would you be concerned if you were
10 engaged in conduct that invited someone to breach
11 the tariff?

12 MR. JENSEN: I'll object. I think
13 you're asking him to speculate.

14 MS. TUCKER: It also calls for a legal
15 conclusion.

16 BY MR. SMITH:

17 Q. Go ahead and answer.

18 A. That sounds like it's a legal question
19 that I don't know the answer to.

20 Q. What's your understanding of the
21 conduct or responsibility as a lay person in that

1 regard?

2 **A. My understanding is I would be**
3 **responsible for my behavior.**

4 Q. That's my question. What if your
5 behavior is inviting another to disregard a
6 tariff?

7 MR. JENSEN: Same objection.

8 THE WITNESS: And I think I responded.
9 I'm responsible for my behavior.

10 BY MR. SMITH:

11 Q. If there's a subscriber out there with
12 a toll free number and wants to change RespOrgs
13 and would like to know what's a good change to
14 make and they call your office, what do you say?

15 **A. We don't provide that information.**

16 Q. Okay. Where do you send them?

17 **A. We don't.**

18 Q. How do they find out who's an
19 available RespOrg for that change?

20 **A. Well, any RespOrg is an available**
21 **RespOrg.**

1 Q. How do they know who's available,
2 though, where to go? You don't touch that?

3 **A. No.**

4 Q. You turn them away?

5 **A. If they ask for a specific company**
6 **name, we can give them a contact name. But if**
7 **they don't, then we just --**

8 Q. How about if that kind of request
9 comes to the SMT?

10 **A. I assume it's the same thing.**

11 Q. Do you know?

12 **A. No.**

13 Q. Have you ever had any experience with
14 that kind of situation at the SMT level?

15 **A. I wouldn't have that experience at the**
16 **SMT level. I'm not a member of the SMT.**

17 Q. What's the procedure under the tariff
18 when a RespOrg becomes inactive and numbers come
19 back into the pool as a consequence but there is
20 no RespOrg as a substitute designated by that
21 subscriber?

1 MR. JENSEN: You're asking him to
2 recite what the tariff says. I would object that
3 the tariff speaks for itself.

4 BY MR. SMITH:

5 Q. Tell me what the practice is at DSMI
6 in that kind of situation.

7 **A. When -- what's the situation, again,**
8 **here?**

9 Q. RespOrg becomes inactive.

10 **A. Inactive, meaning they've been**
11 **disconnected?**

12 Q. Can't have access to the database.

13 **A. Okay.**

14 Q. So subscribers are without their ronin
15 samurai. They need a new RespOrg, but they
16 haven't picked one. What is the practice at DSMI
17 to reassign those numbers?

18 **A. I'm not a hundred percent versed on**
19 **the specifics of it, but there was a process that**
20 **was worked out with the industry whereby all of**
21 **the RespOrgs are notified of the fact that there**

1 **is numbers in such a situation, and they're given**
2 **a period of time to try and contact those**
3 **customers to see if they can influence that**
4 **subscriber to change their RespOrg or to take**
5 **them on as a new RespOrg.**

6 Q. And that's not marketing, I guess,
7 when that happens?

8 **A. That's your term you're using. I was**
9 **describing the process for dealing with the**
10 **numbers.**

11 Q. According to the DSMI practice, that
12 sort of solicitation under those circumstances by
13 a RespOrg wouldn't be considered marketing or an
14 unlawful solicitation, I suppose?

15 **A. That's an industry-agreed process**
16 **that's in place. They're given a certain length**
17 **of time to make the contact, to deal with the**
18 **numbers, whatever they want to do. If at the**
19 **length of that time interval there are numbers**
20 **still remaining that have not been changed,**
21 **they're disconnected.**

Page 285

1 Q. Okay. Now when you say this industry
2 guideline or process, is there a specific group
3 you have in mind that's the formulator of that?
4 A. We take most of the industry
5 interactions through the SNAC.
6 Q. What does that stand for?
7 A. SMS/800 Number Administration
8 Committee.
9 Q. Who's on that committee?
10 A. Companies that choose to participate
11 in the ATIS forum structure.
12 Q. What does ATIS stand for?
13 A. Alliance for Telecommunications
14 Industry Solutions, I believe.
15 Q. So anybody who is a member of the ATIS
16 can get on the SNAC?
17 A. I believe that's right.
18 Q. It's just an open forum so long as
19 you're an ATIS guy; is that true?
20 A. I believe that's true.
21 Q. Okay. And the SNAC sits down and it

Page 286

1 formulates guidelines to deal with certain
2 aspects of numbering administration; is that
3 true?
4 A. The charter of the SNAC is to deal
5 with issues related to the SMS/800.
6 Q. And do they take a vote of the
7 committee as a whole on these type of
8 resolutions?
9 A. All of the ATIS groups work on what
10 they call a consensus process.
11 Q. So there's more than one group like
12 SNAC that's affiliated with ATIS, correct?
13 A. Correct.
14 Q. Okay. And SNAC, like all of these
15 ATIS-affiliated groups, works on a consensus
16 basis, which means everybody has got to agree
17 before a certain guideline is adopted?
18 A. They define consensus themselves. I'm
19 not sure what their definition is.
20 Q. There's a formula determining
21 consensus, but once it's reached, they promulgate

Page 287

1 a guideline, correct?
2 A. Correct.
3 Q. Okay. And then what is the
4 relationship of that guideline to DSMI?
5 A. That guideline -- since ATIS
6 agreements are voluntary by nature, that's
7 reviewed then with the RBOCs and the SMT. If
8 they choose to implement it as a policy that
9 people should follow and their vendor structure
10 should follow, then it's implemented.
11 Q. Okay. So SNAC by consensus proposes a
12 guideline, but DSMI doesn't do anything about it
13 unless it gets approval from STM?
14 A. SMT.
15 Q. SMT, correct.
16 A. Uh-huh, that's correct.
17 Q. And so SMT is sort of in charge of
18 approving those kinds of guidelines and seeing if
19 they're implemented in your system; is that
20 correct?
21 A. It's not a DSMI system. It's an RBOC

Page 288

1 system.
2 Q. The whole thing, the help server, the
3 database, everything, correct?
4 A. Correct.
5 Q. Before that's done in practice
6 historically, does the SMT get approval from the
7 FCC?
8 A. It depends on what the topic is.
9 Q. Okay. This RespOrg change that
10 started this discussion, was that approved by the
11 FCC before it was implemented?
12 A. The ability to make RespOrg changes?
13 Q. To make them under the circumstances
14 that I just hypothesized to you at the beginning
15 of this particular segment of the deposition.
16 A. The allocation portion of that, that
17 was approved by the Commission as part of the
18 SMS/800 tariff.
19 Q. In your experience as president of
20 DSMI, have you ever had an occasion where a
21 guideline has been recommended by SNAC and

Page 289

1 adopted by the management team which is
2 inconsistent or potentially inconsistent with the
3 tariff?
4 **A. Not that I'm aware of.**
5 Q. Has that subject ever come up in any
6 meetings at DSMI or the SMT, hey, if we adopt
7 this particular guideline it may be inconsistent
8 with the tariff, that sort of discussion?
9 **A. My guess is yes, but I can't remember**
10 **any specific cases.**
11 Q. Can you remember what was done in
12 those cases to deal with that apparent
13 inconsistency?
14 **A. No. Well, I mean, I can't remember**
15 **any specific cases, so I wouldn't have any idea**
16 **what was done.**
17 Q. The way that the RespOrgs access the
18 DSMI database to get an assignment of a toll free
19 number that we've talked about is all
20 computerized and so forth, right?
21 **A. Correct.**

Page 290

1 Q. Is that access procedure embraced in
2 the SMS/800 tariff?
3 **A. I have no idea what you mean by**
4 **"embraced."**
5 Q. Well, is it -- not embraced, but is it
6 mandated by the tariff?
7 **A. As I understand it, tariffs don't**
8 **mandate things. They offer options that you can**
9 **purchase or not purchase.**
10 Q. On such and such terms?
11 **A. Right. There are a variety of access**
12 **options contained in the tariff.**
13 Q. Okay. And are all of them neutral in
14 the sense that there's no human intervention, it
15 just is mechanized through the database?
16 **A. Correct.**
17 Q. That characterizes -- that essential
18 concept characterizes any access protocol that's
19 offered under this SMS/800 tariff, correct?
20 **A. Correct.**
21 Q. When was the first occasion at which

Page 291

1 you were present when disconnection of the 629
2 numbers from the Beehive system was discussed?
3 **A. I have no idea.**
4 Q. What's your best recollection? 1996
5 sometime?
6 **A. I have no idea.**
7 Q. Do you know where the discussion
8 occurred? Well, there were a series of
9 discussions prior to disconnection, weren't
10 there?
11 **A. I would assume there were, but I don't**
12 **remember any of them.**
13 Q. Didn't you testify on June 13, 1996,
14 that there were several months worth of
15 discussions involving yourself and others
16 figuring out what you were going to do with this
17 situation with Beehive?
18 **A. There are meeting notes that you have**
19 **that show those dates.**
20 Q. Have you given them all to us here in
21 this stack of documents that I've been examining

Page 292

1 you from today?
2 **A. Yes, we have.**
3 Q. These are all the board of director's
4 meetings at DSMI and all the management committee
5 meetings from the STM; is that right?
6 **A. SMT.**
7 Q. SMT. I'm sorry.
8 **A. Correct.**
9 Q. Too many of these numbers. Were you
10 present at all of those meetings where the
11 discussion issue and the Beehive 629 issue was
12 discussed prior to May 29, 1996?
13 **A. I wouldn't know that.**
14 Q. Who were the major players in that
15 decision-making process? Was it the DSMI board?
16 Was it a major player?
17 **A. No, the major players would have been**
18 **the RBOCs of SMT.**
19 Q. Is it fair to say that the SMT was the
20 decision maker as far as the disconnection
21 decision?

Page 293

1 A. I don't remember specifically how that
2 decision was made.

3 Q. But you remember that the RBOCs
4 serving on that committee made the decision?

5 A. No, I just said, I think, that I
6 didn't remember how the decision was made.

7 Q. I'm asking who made it, not how it was
8 made. Do you remember who made it?

9 A. No.

10 Q. Do you remember what was discussed at
11 the meetings, what options were discussed, what
12 do we do with this?

13 A. No.

14 Q. Do you remember discussions whether we
15 were going to give Beehive notice, that we were
16 going to do this?

17 A. No.

18 Q. You don't remember any discussions.
19 Do you remember any discussions like, gosh, if we
20 do this maybe some lives will be put in peril, we
21 should check into that? Anything like that that

Page 294

1 you can recall?

2 A. No.

3 Q. That wouldn't stick out in your mind.
4 a safety issue? Was that raised at any of these
5 meetings that you attended?

6 A. I don't remember.

7 Q. Under the tariff, can access to the
8 database be provided to a RespOrg in a manner
9 other than a dial-up or on a dedicated basis?

10 A. There's mechanized generic interface.

11 Q. Is that process described in the
12 tariff?

13 A. Yes, it is.

14 Q. Okay. Describe that process for me
15 here today, if you would, please.

16 A. It's a system-to-system computer
17 interface high speed link.

18 Q. Is it, again, through a keyboard and
19 access through a computer as opposed to someone
20 calling someone or submitting a piece of paper?

21 A. It's computer-to-computer at their

Page 295

1 end -- at the RespOrg end there's a computer
2 system that interfaces with us as opposed to a
3 terminal.

4 Q. Other than that, are there any other
5 ways?

6 A. For handling what?

7 Q. Where under the SMS tariff access is
8 provided to a RespOrg in a manner other than a
9 dial-up or dedicated basis?

10 A. It depends on what you're asking for.
11 I mean, if you're asking for access to number
12 reservation activities, no, there's not.

13 Q. There's not, okay. Now has DSMI ever
14 had any complaints from subscribers or RespOrgs
15 in the toll free number area complaining about
16 the assignment of numbers, who gets what, you
17 didn't give me this and you should have,
18 et cetera? Any complaints relating to number
19 assignment while you have been president of DSMI?

20 MR. JENSEN: Other than from Beehive?

21 BY MR. SMITH:

Page 296

1 Q. Other than from Beehive, yes.

2 A. I don't know how to answer that.
3 There are always people out there who have
4 concerns that their RespOrg didn't get their
5 number for them.

6 Q. I'm talking about complaints directed
7 at DSMI.

8 A. We don't have anything to do with the
9 number administration activities. It's
10 mechanized.

11 Q. Has anybody complained about the
12 mechanics of it?

13 A. There have been discussions very
14 recently about whether it was strictly first
15 in/first out.

16 Q. That's what I'm talking about, stuff
17 like that. Who raised that complaint?

18 A. MCI, AT&T.

19 Q. What was the nature of their
20 complaint?

21 A. Some of the queuing structures

Page 297

1 associated with the process were not a hundred
2 percent first in/first out.

3 Q. Queuing is Q-U-E-I-N-G; is that right?

4 A. I don't know, actually. I think
5 that's right.

6 Q. Like getting in a line?

7 A. Correct.

8 Q. And did they formalize that complaint
9 with some kind of action before the FCC?

10 A. I don't know whether they formalized
11 it with the Commission.

12 Q. Okay. Has DSMI ever been sued in a
13 court? I'm not talking about the FCC or an
14 agency. But in a court before on account of its
15 involvement in the administration of the tariff?

16 A. No.

17 Q. Has DSMI ever had a complaint filed
18 against it at the FCC in the same regard?

19 A. Not that I'm aware of.

20 Q. Have you ever gone to mediation or
21 arbitration over those kinds of issues in the

Page 298

1 past with any party?

2 A. No.

3 Q. What is a revenue loss to the RBOCs if
4 the services associated with this tariff are
5 detariffed?

6 A. I don't understand what that question
7 is.

8 Q. What do they stand to lose in dollars?

9 A. If what happens?

10 Q. If this database system is
11 disassembled.

12 MR. JENSEN: I'll object. You're
13 asking him to speculate again.

14 BY MR. SMITH:

15 Q. Or if they lose this business. If
16 they lose the tariff, somebody else takes over,
17 is put out to bid and somebody is a better
18 competitor and does it better and cheaper, what
19 are the RBOCs going to lose in dollars?

20 MR. JENSEN: Same objection.

21 BY MR. SMITH:

Page 299

1 Q. Do you have an estimate? Do you have
2 an idea?

3 A. No.

4 Q. Has it ever been discussed in any
5 meeting you've attended?

6 A. Not to my knowledge.

7 Q. There was a lapse of time when Beehive
8 allegedly wasn't paying its RespOrg charges to
9 DSMI and when DSMI finally took steps in the
10 nature of enforcement steps. Do you remember
11 that?

12 A. Do I remember that there was a --

13 Q. The lapse of time.

14 A. There was an interval, yes.

15 Q. Do you remember how large it was?

16 A. No.

17 Q. A couple of years, wasn't it?

18 A. I don't know.

19 Q. Do you have an explanation as to the
20 inaction of DSMI in making its collection efforts
21 against Beehive?

Page 300

1 A. I have no idea how long the interval
2 was.

3 Q. Well, do you know when Beehive signed
4 up as a RespOrg initially with DSMI?

5 A. They came on at portability in May of
6 '93, I think.

7 Q. And your first collections were by
8 letter, were they not, at the end of 1994?

9 A. I don't know.

10 Q. Do you have any recollection of why it
11 took so long to get around to collecting against
12 Beehive?

13 A. No.

14 Q. Why it took so long to getting around
15 to allegedly revoking their status as RespOrg?

16 A. No.

17 Q. Do you have any recollection of any
18 reason for the particular timing involved when
19 you did finally send out notices and so forth?
20 What prompted it?

21 A. What prompted it was past due

Page 301

1 accounts.

2 Q. Well, there's past due accounts for a
3 lot of months and you weren't prompted, but all
4 of a sudden you were prompted to do it. I'm
5 wondering what was the occasion in that month
6 that was different from all the other months
7 where you didn't act?

8 A. I can't respond to that. I don't
9 know.

10 Q. You don't have any memory of the
11 timing factor and why it was done then?

12 A. No.

13 Q. Did it have anything to do with
14 Beehive's objection to your tariff?

15 A. I have no idea.

16 Q. Do you remember any discussions about
17 that?

18 A. No.

19 Q. Did you ever have any conversations
20 with anybody about that?

21 A. About Beehive's objection to the

Page 302

1 tariff or about the linkage between the two?

2 Q. Both. Well, about the linkage between
3 the two.

4 A. No.

5 Q. You don't remember?

6 A. None. No memory.

7 Q. How about other RespOrgs out there in
8 1993, 1994, 1995, and 1996? Any that were
9 delinquent in paying their charges under this
10 tariff?

11 A. I don't know.

12 Q. Do you remember any letters sent out
13 saying you got to pay or else we're going to
14 revoke your RespOrg status and disconnect your
15 numbers? Do you remember anything like that?

16 A. I know we sent letters like that out.

17 Q. Okay. When and to whom?

18 A. I don't have the list with me. I
19 think about every month.

20 Q. Have you ever revoked somebody's
21 status as a RespOrg on account of delinquency

Page 303

1 other than Beehive -- your allegation that you
2 did in Beehive's case, at least?

3 A. I'm not sure.

4 Q. No recollection at this point?

5 A. I mean, I don't know that we have or
6 haven't. It wouldn't surprise me either way.

7 Q. Nothing that sticks out in your mind,
8 though?

9 A. No.

10 Q. Could you estimate how many times it
11 may have happened or just don't know?

12 A. I have no idea.

13 Q. From 1993 to 1996, how many RespOrgs
14 were there who had their numbers disconnected
15 like you did with Beehive for any reason?

16 A. I can't tell you that.

17 Q. Can you remember whether there were
18 any?

19 A. Well, there's a whole list.

20 Q. Of disconnected numbers?

21 A. Yeah.

Page 304

1 Q. Okay. Where is this list?

2 A. We have it at the office.

3 Q. Okay. For that period of time?

4 A. I don't remember the time frames
5 associated with them.

6 Q. The time that I asked you was 1993 to
7 1996. That's the time frame that we're looking
8 at. That's what my question was.

9 A. I have no idea about that time frame.

10 I know we have a list of companies that have
11 stranded numbers, but I don't know -- I don't
12 remember offhand what the time frames associated
13 with them are.

14 Q. Okay. Why the numbers were stranded,
15 do you remember that with any of these companies?
16 Do you remember any of the companies?

17 A. No.

18 Q. Do you remember why they went inactive
19 with their status or if that was the cause for
20 the numbers being stranded?

21 A. They had to have been inactive or the

1 numbers wouldn't be stranded. Some are voluntary
2 disconnects; some are disconnects because of
3 bankruptcies; some are consolidations. I mean,
4 we disconnect 150 or so RespOrg IDs every month.

5 Q. But what about this period, 1993 to
6 1996?

7 A. I can't tell you that.

8 Q. Do you have a specific memory or are
9 you just projecting backwards in time from your
10 present experience?

11 A. I can tell you what we do now. I
12 don't remember what was going on at that point in
13 time.

14 Q. How did you prepare for this
15 deposition, Mr. Wade?

16 A. I spent six hours in Newark Airport
17 yesterday trying to get down here late last
18 night.

19 Q. Okay. Just waiting for a change of
20 airplane or waiting to get on an airplane?

21 A. Cancelled flights.

1 Q. I mean, prepare to respond to
2 questions. Did you make any review of documents?

3 A. No. I mean, we scanned the documents
4 to try to produce the documents as part of the
5 document production activity, but I haven't gone
6 back through and reread everything or anything
7 like that.

8 Q. Have you talked with anybody about the
9 questions that might be asked and how you might
10 respond?

11 A. I've talked with counsel.

12 Q. Anybody other than counsel?

13 A. No.

14 Q. You didn't talk with your wife?

15 A. No.

16 MR. SMITH: Okay. You should have
17 objected. Floyd. That assumed a fact not in
18 evidence. I don't know that he's married.

19 MR. JENSEN: You're too fast for me.

20 BY MR. SMITH:

21 Q. Now you're aware that while

1 Judge Jenkins was keeping everybody on hold and
2 this matter was pending in his court that counsel
3 for DSMI on at least two -- and there may have
4 been more, but two comes specifically to mind.

5 Two occasions he went to court and told

6 Judge Jenkins the numbers were going to be
7 released, the 629 numbers, unless something was
8 done. Do you recall those events?

9 A. No.

10 Q. Do you recall meeting with your board
11 of directors at DSMI or at the management level,
12 the management team, and discussing this issue of
13 getting the litigation in Utah off dead center?

14 A. I don't know what that means, "getting
15 the litigation off dead center."

16 Q. Getting a ruling, getting on with it,
17 getting these numbers released.

18 A. You have the meeting notes. You can
19 see what was discussed.

20 Q. Didn't we look at one exhibit, in
21 fact, where that subject came up this morning or

1 this afternoon?

2 A. The subject of?

3 Q. Releasing the numbers.

4 A. Yes.

5 Q. There was an action item in one of
6 these items that said to release them and then
7 tell the judge?

8 MR. JENSEN: I'll object. You're
9 mischaracterizing the document.

10 MR. SMITH: That's what it said.

11 MR. JENSEN: Go back to the document
12 and read it.

13 BY MR. SMITH:

14 Q. You do remember that steps were taken
15 and pleadings were filed in the Utah court to get
16 clarification from Judge Jenkins and to get some
17 ruling, to get an order, correct?

18 A. I didn't say that.

19 Q. Okay. Would it help to show you
20 copies of the pleadings? Would that refresh your
21 recollection or are you just going to tell me you

Page 309

1 don't remember?

2 **A. I mean, I don't remember. If there**
3 **are pleadings there that were filed, then I**
4 **assume they were filed.**

5 Q. Okay.

6 **A. That doesn't mean that I remember them**
7 **being filed.**

8 Q. Do you remember ever discussing the
9 filing of the pleading in light of a Tenth
10 Circuit Mandate and getting some clarification in
11 terms of that order and what it meant? Have you
12 ever discussed anything like that with your DSMI
13 board of directors?

14 **A. I don't know. If it does, it would be**
15 **in the meeting minutes.**

16 Q. You don't have any recollection? How
17 about with your management team?

18 **A. No.**

19 Q. Some kind of discussion such as, you
20 know, we're taking this position and interpreting
21 it this way, but if we're wrong, we might not be

Page 310

1 following it, we're not sure, maybe we'd better
2 get clarification? Any discussion of that sort
3 as to the Tenth Circuit order in either your
4 board of directors at DSMI or your management
5 team?

6 **A. And you're asking if I have specific**
7 **recollection of something like that happening?**

8 Q. Yes.

9 **A. No.**

10 Q. Have you -- as to the litigation
11 pending between Beehive and DSMI in Utah, is it
12 your practice and policy through the course of
13 that litigation to review all pleadings that are
14 filed by your counsel in that court?

15 **A. Yes.**

16 Q. Okay. Have you done so as to all
17 pleadings?

18 **A. I believe so.**

19 Q. Okay. And is the same true for
20 pleadings from Beehive's side? Are they
21 forwarded to you for review, and have you

Page 311

1 reviewed them as a matter of practice throughout
2 the course of that proceeding?

3 **A. I believe so.**

4 Q. Okay. Now I asked the same question
5 about pleadings that are filed by your counsel
6 with the FCC in any DSMI, RBOC, Beehive-related
7 docket. As a matter of practice, have you been
8 copied on all those pleadings and reviewed them?

9 **A. Yes, I have.**

10 Q. Okay. Have any of the pleadings in
11 the DSMI-Beehive litigation or any of the
12 pleadings involving Beehive, DSMI, and the RBOCs
13 with the FCC from DSMI been filed without your
14 authorization or approval?

15 **A. Not that I'm aware of.**

16 Q. Okay. Now I asked you as to the Tenth
17 Circuit mandate whether you have ever
18 participated in a conversation or discussion with
19 TSMI personnel or the management team personnel
20 concerning getting some clarification of that
21 order, and you said you couldn't recall, correct?

Page 312

1 **A. Correct.**

2 Q. Okay. Now I want to know, have you
3 personally individually inside your own head
4 considered that there was a need to get
5 clarification of that order for any reason, the
6 Tenth Circuit order?

7 **A. No.**

8 Q. Okay. Was DSMI or the management team
9 concerned from '96 through January of '99 that so
10 many of the 629 numbers were on unavailable
11 status?

12 **A. I don't know what you mean by were**
13 **they concerned.**

14 Q. Well, did you want to get them out of
15 unavailable status, out circulating?

16 **A. Well, clearly the point of portability**
17 **is to have numbers available to subscribers.**

18 Q. So you were concerned?

19 **A. I mean, the concept of having numbers**
20 **locked up is not consistent with number**
21 **portability.**

Page 313

1 Q. Did you take steps with the court in
2 Utah to prompt the court to do something about
3 that, to release the numbers, to get them out
4 there in use?

5 A. Not that I recall.

6 Q. Okay. Isn't it a fact that your
7 counsel filed a number of pleadings representing
8 to the court that this was not good, it was not
9 policy, it was not nice under the tariff, get
10 these numbers out?

11 MR. JENSEN: We've plowed this ground
12 before. I don't know if you're asking him if he
13 recalls what the pleading says --

14 MR. SMITH: Can we stipulate that
15 that's the fact, and then I'll move onto the next
16 question?

17 MR. JENSEN: The pleadings speak for
18 themselves.

19 MR. SMITH: Can we stipulate to the
20 fact that no similar pleadings have been filed
21 since January of 1999 anywhere with the District

Page 314

1 Court in Utah?

2 MR. JENSEN: The pleadings that have
3 been filed are on file, and you know what they
4 are. We know what they are.

5 MR. SMITH: I want a stipulation so I
6 can ask my next question, which is why haven't
7 there been any.

8 MR. JENSEN: That's not a question
9 that --

10 MR. SMITH: I wonder if --

11 MR. JENSEN: You're asking for a legal
12 analysis.

13 MR. SMITH: I'm asking for what
14 discussions there have been.

15 MS. TUCKER: Privileged.

16 BY MR. SMITH:

17 Q. As far as -- since January of '99,
18 have you discussed with your management team or
19 your DSMI board filing something in Utah to get
20 these numbers out of unavailable status?

21 A. Summaries of the discussions are in

Page 315

1 the notes.

2 Q. Can you remember independent of those
3 minutes?

4 A. No.

5 Q. And you know why I keep asking that?
6 I know you keep referring to the minutes, but not
7 everything that's discussed is necessarily put in
8 those minutes. Things can be discussed that
9 aren't put there, so I want your independent

10 recollection. With that in mind, what do you
11 independently recollect, if anything,
12 post-January '99 discussions with your DSMI board
13 or management committee as far as filing
14 something out in Utah to get these numbers off of
15 unavailable status?

16 MR. JENSEN: That question has been
17 asked and answered.

18 MR. SMITH: I don't think that one was
19 answered.

20 MS. TUCKER: The case was referred to
21 the FCC in April of '99, so wouldn't --

Page 316

1 MR. SMITH: That's argumentative. I'm
2 asking a fact question.

3 BY MR. SMITH:

4 Q. The fact question is, you know, have
5 you had those kind of discussions?

6 A. Not that I recall.

7 Q. Isn't it a fact, Mr. Wade, that you
8 have been instructed by someone at the RBOC or
9 Telcordia or Bellecore level to do everything in
10 your power to block Beehive's access to these 629
11 numbers and not to have them assigned under any
12 circumstances?

13 A. That one I can answer. No.

14 Q. Isn't it a fact that you would incur
15 sanctions from your superiors if you were to
16 allow that to happen, if you were not to block
17 Beehive in its efforts to get the 629 numbers?

18 A. No.

19 Q. You can honestly say that you have no
20 fear in your heart that you will incur the
21 displeasure of those you answer to if you release

Page 317

1 these numbers to Beehive --
2 **A. Yes, I can say that.**
3 Q. -- on your own initiative? Just I'm
4 the man, I'm in charge of this, here I go?
5 **A. What I say, I say.**
6 Q. I decide. You can do that today?
7 **A. You switched questions there. What's**
8 **your question?**
9 Q. That you are without fear in making
10 that decision, and if you made it to release the
11 numbers, you wouldn't be worried about the
12 consequences?
13 **A. The question I think you asked was am**
14 **I afraid of sanctions if the numbers were**
15 **released, and the answer was no.**
16 Q. From your superiors?
17 **A. Right.**
18 Q. Okay. Why won't you talk settlement
19 with Beehive?
20 **A. Settlement of what?**
21 Q. Of this numbers issue.

Page 318

1 MR. JENSEN: I'll object. That's
2 clearly outside the scope of examination --
3 MR. SMITH: I think it's very
4 relevant.
5 MR. JENSEN: It's also protected by
6 the rule against disclosure of settlement
7 discussions.
8 MR. SMITH: I'm not asking him to
9 disclose settlement discussions. I don't think
10 there have been any. My question is, why haven't
11 there been any.
12 MR. JENSEN: Same objection.
13 MR. SMITH: Why won't you talk to us?
14 MR. JENSEN: It's outside the scope of
15 discovery.
16 MR. SMITH: It goes to motive. It
17 goes to the possibility of deliberate intent in
18 blocking Beehive's access to the numbers. It
19 goes to -- that intent would suggest a
20 contrivance to thumb noses at the Court's order
21 at any cost. It's very relevant, and I'm

Page 319

1 entitled to ask that question. It also goes as a
2 follow-up to the question that you permitted,
3 which is why won't you just release these
4 numbers. Aren't you afraid that somebody above
5 you is going to squash you if you do? He says,
6 no, I'm not, so I say, why don't you talk
7 settlement with this thing. If you're the man
8 and you can settle, then let's talk. I think the
9 answer is because someone above him says, don't
10 you dare talk to those guys.
11 MR. JENSEN: You can make speeches and
12 arguments all you want on the record.
13 MR. SMITH: I'm answering your
14 objection.
15 MR. JENSEN: Well, okay.
16 MR. SMITH: I'm answering your
17 objection.
18 MR. JENSEN: I've made the objection.
19 BY MR. SMITH:
20 Q. Okay. What's the answer to my
21 question?

Page 320

1 **A. Should I respond? What's the question**
2 **again?**
3 Q. Why won't you talk settlement with us?
4 THE WITNESS: Should I respond?
5 MR. JENSEN: Sure.
6 THE WITNESS: I'm not in a position to
7 talk settlement. DSMI is charged with supporting
8 the RBOCs in a provision of services via a
9 tariff. There are no provisions in the tariff
10 for settlement.
11 MR. SMITH: Let's go off the record.
12 (Discussion off the record.)
13 BY MR. SMITH:
14 Q. The record should reflect that we
15 accommodated Mr. Wade in agreeing to let him come
16 at 10:00 so he could fly down this morning. The
17 quid pro quo was we could keep him until 7:00 or
18 8:00 tonight, and we're not getting satisfaction
19 on the quid pro quo. I'd like the record to
20 reflect my understanding in that respect. I'm
21 doing my best to get him out of here so he can

Page 321

1 catch his airplane because I'm sympathetic to
2 anybody who has to be in Newark for a minute, let
3 alone five hours.

4 MR. JENSEN: For the record, we don't
5 want to cut you off, but I think a fair summary
6 of today's proceedings would be that you've gone
7 into areas that are marginally relevant, if at
8 all. We don't feel responsible for the time
9 you've taken in those questionable areas.

10 BY MR. SMITH:

11 Q. I guess my concluding question to you,
12 Mr. Wade, is what sentence of the Tenth Circuit
13 order puts you in charge of deciding what's
14 necessary or justified?

15 MR. JENSEN: The Tenth Circuit order
16 speaks for itself.

17 BY MR. SMITH:

18 Q. Did you have a specific phrase that
19 you were counting on to assign you that task that
20 you can point to in the order for me?

21 A. I disagree with the premise of the

Page 322

1 question.

2 Q. Which premise? That the order gave
3 you that task or that you interpret the order to
4 give you that task or that -- or what?

5 A. Both of those.

6 Q. Well, you have some definition of need
7 or just justification. I'm not sure what it is.
8 I'm not sure what target Beehive has to hit to
9 satisfy you. That is part of my problem, and
10 you're not telling me in this deposition so far.
11 I'll give you one last chance. What is the
12 target that Beehive has to hit to satisfy

13 whatever test it is that you have in interpreting
14 this language in the Tenth Circuit order?

15 MR. JENSEN: The target is stated in
16 the Tenth Circuit order. You can read the
17 language.

18 BY MR. SMITH:

19 Q. I have to get past this man sitting
20 across from me here, and I'm wondering how to do
21 that. In fairness if you're going to ask me to

Page 323

1 shoot at a target, you have to tell me how many
2 feet and what I can shoot with and so forth. I'm
3 not just going to keep putting up fowl shots and
4 have you move the basket on me. I want to know
5 where the basket is that I'm going to hit.
6 That's fair.

7 MR. JENSEN: The basket is the Tenth
8 Circuit order.

9 MR. SMITH: As interpreted by
10 Mr. Wade.

11 MR. JENSEN: We don't have a better
12 ability to interpret than you do.

13 MR. SMITH: He's got something in mind
14 that he's not saying. What is need? What is
15 justification, and where does this order -- just
16 tell me. Where does it allow you to define that?

17 MR. JENSEN: You're asking for a legal
18 interpretation. You'd be better off asking that
19 question of the Tenth Circuit. You're the ones
20 who used the language.

21 MR. SMITH: I'm asking for his

Page 324

1 understanding as he read the order and as he's --
2 as he says "following it."

3 MR. JENSEN: That's asking for a legal
4 interpretation.

5 MR. SMITH: I'm asking for his
6 understanding. What language is he relying on?
7 Do you want to see the order?

8 MR. JENSEN: Show him the order and
9 let him point to the sentence that's applicable.

10 MR. SMITH: Let's mark this as an
11 exhibit. Do you want to use the November 24th or
12 the January 6th? It's got the same language with
13 one minor exception. January 6th?

14 MR. JENSEN: You've got to have the
15 whole thing that was attached to the January 6th
16 order.

17 MR. SMITH: November 24th?

18 MR. JENSEN: The revised order from
19 November 24th is attached to the November 6th
20 order.

21 (Wade Deposition Exhibit Number 20 was

Page 325

1 marked for identification.)

2 THE WITNESS: What are we looking at?

3 BY MR. SMITH:

4 Q. You are going to tell me what language
5 you are relying on from your personal
6 understanding, not a legal conclusion, that
7 allows you to test the need or justification that
8 is noted in that order in terms of Beehive's
9 access to these 629 numbers.

10 MR. JENSEN: Again, I think you're
11 mischaracterizing his testimony, but at least he
12 can point to the language of the order.

13 MR. SMITH: I'm not characterizing
14 testimony with that question.

15 MS. TUCKER: Actually, it's confusing.
16 Could we clarify whether you mean 800-629 numbers
17 or do you mean 888-629 numbers?

18 MR. SMITH: I mean the numbers in
19 controversy in this proceeding. As I said right
20 at the beginning, the 800-629 numbers. I don't
21 think there's any question about that.

Page 326

1 THE WITNESS: What do you want me to
2 do, read this to him?

3 MR. JENSEN: Sure.

4 BY MR. SMITH:

5 Q. I want you to read me the language
6 that says, Michael Wade, you get to decide what's
7 justified and what's needful following this
8 order. Where is that in there?

9 MR. JENSEN: Well, again, you're
10 making an assumption that he has made that
11 conclusion. I don't think that's justified on
12 the basis of the testimony he's given.

13 BY MR. SMITH:

14 Q. Well has anybody else in charge of
15 looking at whatever form Beehive submits to you
16 and saying, yep, this is consistent with the
17 Tenth Circuit or, nope, this isn't consistent
18 with the Tenth Circuit? Is there anybody else
19 out there who's going to do that at your end or
20 is it you, Michael?

21 MR. JENSEN: As you recall, there was

Page 327

1 a hearing before Judge Jenkins in which
2 Judge Jenkins said that he would make the
3 decision. If Beehive wanted to have one of those
4 numbers, it should go to him with that request,
5 and he would make the decision as to whether it
6 was appropriate to release that number or not.

7 MR. SMITH: Yes, I remember that, and
8 I also remember what you argued at the Tenth
9 Circuit about that and why we have this paragraph
10 that we're reading right now. My question is,
11 you know, the same. I'd like an answer to that
12 question.

13 BY MR. SMITH:

14 Q. Is there anything in there that you
15 rely on from your personal understanding that
16 gives you the authority to make the decision that
17 you are, in fact, making here. I mean, that's
18 the reality, unless you tell me there's another
19 person that's going to look at this piece of
20 paper that Beehive sends to you and says, nope,
21 that's not need, that's not justification.

Page 328

1 MR. JENSEN: Again, your question
2 assumes that Mr. Wade has concluded that he
3 and/or DSMI is the arbiter of what's necessary
4 under the terms of the order.

5 MR. SMITH: Are you telling me you're
6 not going to be the arbiter? You're not going to
7 do that? I'm going to have Mr. Brothers send a
8 piece of paper tonight, and he'll put whatever he
9 puts, and you're not going to decide whether
10 that's need or justification within the meaning
11 of this exhibit that you're looking at right now,
12 Number 20.

13 MR. JENSEN: You're asking him to
14 speculate again.

15 MR. SMITH: I think he knows what he's
16 going to do. Just tell me. Tell me that you're
17 not going to do that. Is that a fact, you're not
18 going to? Will you promise right now that you
19 won't pass on it? You'll say, oh, okay, he wrote
20 it, fine, send out the numbers? Is that what
21 you'll do?

Page 329

1 MR. JENSEN: You're asking him to
2 speculate. The question is totally outside the
3 scope of permissible discovery.
4 MR. SMITH: It goes to the heart of
5 this contempt proceeding.
6 BY MR. SMITH:
7 Q. You can answer. Are you not going to
8 do that? Are you not going to look at that paper
9 and make a judgment and say thumbs up or thumbs
10 down? You're just going to let it go by?
11 MR. JENSEN: I'm going to renew my
12 objection.
13 MR. SMITH: You've objected.
14 MR. JENSEN: I think it's pointless to
15 ask this question.
16 MR. SMITH: I want an answer to this
17 question. He can answer. You've made your
18 objection.
19 BY MR. SMITH:
20 Q. What are you going to do, Michael?
21 MR. JENSEN: Maybe he hasn't decided

Page 330

1 what he's going to do.
2 MS. TUCKER: It depends on the
3 content.
4 BY MR. SMITH:
5 Q. It depends on what Mr. Brothers puts
6 on his paper, doesn't it, which means you're
7 going to judge? If you think it's
8 satisfactory --
9 MR. JENSEN: You're arguing with the
10 witness now.
11 BY MR. SMITH:
12 Q. Isn't that the fact? Isn't that your
13 present intention? You're going to look at that
14 paper and you're going to decide. You're not
15 just going to let it go by. Then that leads to
16 my next question. If you're going to decide,
17 what's the basis upon which you're going to
18 decide?
19 MR. JENSEN: It may very well be that
20 if Beehive chooses to submit something to
21 demonstrate necessity as required by the court

Page 331

1 that we may have to go to the court and ask the
2 court if that's sufficient.
3 MR. SMITH: We're wasting our time.
4 MR. JENSEN: That's a legal decision.
5 MR. SMITH: We can go out and hustle
6 business and get subscribers and go to all that
7 effort, put together the contracts, but all our
8 contracts are going to have to say that we have
9 to go past Mr. Wade, and if he doesn't think this
10 contract is good, he'll say no and then we may
11 not have a deal and we'll have to go to court,
12 et cetera. That's the practical reality, and I
13 think Mr. Wade is aware of that. In fairness,
14 I'm asking what are the ground rules?
15 Are you going to tell me right now
16 what they are so that my client has something
17 reasonable to go on in fashioning those
18 relationships?
19 MR. JENSEN: I'm going to renew the
20 same objection, make the same response. You're
21 asking him to speculate. You're asking him to

Page 332

1 make a legal conclusion, and it's outside the
2 scope of discovery.
3 MR. SMITH: And it's also extremely
4 unfair, so now I'd like an answer.
5 THE WITNESS: Should I answer?
6 MR. JENSEN: If you can -- subject to
7 my objections, if you can, answer the question.
8 THE WITNESS: I can't answer the
9 question. He's asked the question ten times
10 before, and the answer has consistently been that
11 we never got that far.
12 MR. SMITH: Okay.
13 (Reading and signature not waived.)
14 (Time noted: 6:10 p.m.)
15 - - - - -
16
17
18
19
20
21

March 4, 1999

N. M. Grove
MCC 1A-324G

S. G. Chappell
RRC 4C-1103

W. Reed
MCC 1A-352G

Gentlemen:

As you will recall, Database Service Management, Inc. (DSMI), acting as the agent for the Regional Bell Operating Companies (RBOCs), has been involved in legal and regulatory activity related to Beehive Telephone Company, Inc. (Beehive) for several years. The dispute originally centered on non-payment of charges associated with services provided via the SMS/800 Tariff. The dispute has evolved into an issue of proper assignment of the 800-629 code. Beehive claims rights to the code based on an assignment made prior to the implementation of 800 number portability. DSMI is bound by Federal Communications Commission (FCC) regulations requiring that Toll Free numbering resources be made available to all Responsible Organizations (Resp Orgs) on a 'first come – first served' basis.

We recently won an appeal to the Tenth Circuit Court regarding this matter. The Court remanded the case to the Utah District Court, and ordered that the matter be referred to the FCC on the basis of primary jurisdiction. We have filed the necessary petition asking the FCC for an expedited decision.

As part of its handling of the case, the Utah District Court has required that the disputed numbers be turned over to Beehive pending resolution. Both Courts further ordered that "Beehive shall be allowed to obtain a '629' number from the 'unavailable'

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DSMI 000943

block *when necessary* to provide service to a new Beehive customer or additional service to an existing Beehive customer."

Based on advice of Counsel, both internal (Louise Tucker) and external (Floyd Jensen of Ray, Quinney & Nebeker in Salt Lake City), we have complied with the Orders by transferring the disputed number to the Beehive Resp Org account, but leaving the numbers in 'unavailable' status which requires our intervention to release a number for use. We have offered to work with Beehive should they have a situation that meets the requirements specified in the Orders. (See Attachment 1).

We recently received additional correspondence from Beehive. (See Attachment 2) The Beehive letter raised two (2) concerns:

- 1) Beehive claims an error in billing related to the 'unavailable' numbers. Beehive's concern regarding the error in billing is accurate. The SMS/800 Tariff provides that no monthly per number charges will be assessed when the numbers are in 'unavailable' status. Unfortunately, in this case, the records were transferred to the Beehive Resp Org account manually and did not go through the normal screening process associated with the daily feed from SMS/800 to BILL/800. Therefore the 'unavailable' numbers were not filtered from the billing system and Beehive was charged. We have worked with the Bellcore group responsible for BILL/800 and are modifying the system and the processes to assure that this error does not re-occur. We are also preparing to return the over-payment to Beehive. Beehive has been notified of our actions. (See Attachment 3)

Louise and I have reviewed this matter and have agreed on the short reply provided to Beehive, assuring Mr. Brothers that his billing concern is being addressed and his over-payment will be returned to him as quickly as possible.

- 2) The Beehive letter raises an issue regarding a potential legal action, which could negatively impact Mr. Smith, Mr. Ahuja, and DSMI. Although we are concerned about the threats contained in the Beehive letter, we would like to remind you that Mr. Brothers is a known maverick with a wide reputation for bizarre statements and claims. We do not anticipate that any of his threats will materialize but wanted to assure that you, as the DSMI Board of Directors, were aware of the situation.

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We will continue to work with Beehive, responding appropriately to all requests and activities in an effort to assure that the situation is not aggravated.

If there is further activity relative to this matter, I will keep you informed. If there is additional information you desire, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Michael J. Wade".

Michael J. Wade
DSMI – President

copy (w/att) to: R. A. Orriss
 L. L. M. Tucker
 J. C. Braun, Jr.

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DSMI 000945

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3 Corporate Place • Piscataway, NJ 08854-4199
732-699-2100 • Fax 732-336-3295

January 26, 1999

Mr. Arthur Brothers
Beehive Telephone Co., Inc.

Re: Database Service Management, Inc. v. Beehive Telephone Co., Inc.

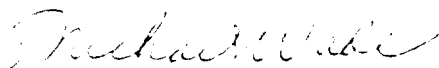
Dear Mr. Brothers:

Thank you for your telephone call of January 25, 1999. As you undoubtedly know, both the Tenth Circuit and now the District Court have provided that "Beehive shall be allowed to obtain a '629' number from the 'unavailable' block *when necessary* to provide service to a new Beehive customer or additional service to an existing Beehive customer."

We would ask that you provide us with the information indicated on the enclosed form for each number from the 800-629 series that you are requesting. Based on that information, in accordance with the court's order, if it appears necessary to provide service to your customer through a number from the 800-629 series, then the number will be released and assigned to Beehive.

Please feel free to call if you have any questions.

Sincerely,



Michael Wade

Enclosure

cc: Louise Tucker
Floyd Jensen

DSMI 000946

BEEHIVE TELEPHONE CO., INC.

125 Base Dr - Wendover 84033

date

February 20, 1992

SMS800 head coach - a division of Bellcore
6 Corporate Place
Placataway, N.J. 08854

Dear Coach,

As you are aware Federal Judge Jenkins in his Order directed Bellcore to release the entire lot of 800 numbers back to Beehive.

We received a bill from you for close to \$4,000 which we surmised was a recognition of turn back of most (but not all) of the numbers in question. We paid that bill. After we paid, we were informed that you would not release the numbers pursuant to the Orders of the Federal Judge. As in sports, if a ref gets angry with certain team members - it can go hard on the players as a result. I had hoped you, of all people, would understand that because your people have (in the opinion of payers in this part of the world) pissed off Judge Jenkins. That was not smart.

I suggest you turn back all the numbers - now. However, since you usurped the numbers, there have been area and NXX changes and so when you re-insert the number, please direct all numbers in the Utah LATA to:

435-999-xxxx

And, within the Northern Nevada LATA, direct them to:

775-472-xxxx

These are similar routing to our existing numbers with the exception that we have not got around to pulling routing from 702 to 775 which has to be done by mid-May of this year.

For your information, all the numbers are assigned. However, it is none of your business to whom they are being used by. If you decline to carry out the direction of the Court, it is our intention to move the Court for both monetary and punitive sanctions which could include jail time for you, Richard Smith, and Sanjiv Ahuja. The latter two are top quality professionals working hard to bring business to Bellcore, and I don't think they would look kindly at being dragged into a ruckus that might cause Lockheed-Martin to find a toe hold to get the 800 data base administration away from Bellcore.

So lets put away all the hard feelings generated by your prior owners and work out solutions that assure both of us a continued existence. We still have to discuss the balance of the numbers you allowed to get away. And, please credit our bills till you turn the numbers back on. Call me anytime. 435-234-0111.

Sincerely Yours,

A. W. Brothers, President
cc: Alan Smith, Dave Irvine, esq.

DSMI 000947

SMS/800

Management Team

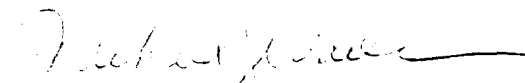
3 Corporate Place • Piscataway, NJ 08854-4199
732-699-2100 • Fax 732-336-3295

March 4, 1999

Mr. A. W. Brothers
Beehive Telephone Co., Inc.
125 Base Dr.
Wendover, UT 84083

Mr. Brothers:

I am in receipt of your letter dated February 20, 1999. We apologize for the error in the billing of your account and are taking immediate steps to correct the error and to assure that it does not re-occur. As quickly as possible, we will be returning to you your over-payments. If you have any billing concerns in the future, please contact us.



Michael J. Wade
SMS/800 Service

DSMI 000948

December 10, 1997

Karen N. Mulberry
MCI
2400 Glenville Avenue
Richardson, Texas 75082

Mark Welch
Southwestern Bell Telephone Company
One Bell Center, Room 40-V-7
St. Louis, Missouri 63101

Dear Karen and Mark:

The following information is being provided in response to your letter of November 21, 1997. In that letter, you asked that Database Service Management, Inc. (DSMI)¹ " ...demonstrate how they meet the neutrality requirements in Section 1.2 of the February 20, 1997, NANP Working Group by December 12th."

Prior to reviewing the facts related to DSMI's neutrality, I would like to take the opportunity to clarify some of the topics discussed during the November 19th meeting of the North American Numbering Plan Administration (NANPA) Working Group. It is critical when discussing "administration", as it applies to the 800 Service Management System (SMS/800), to distinguish between service administration, system administration, and number administration. Let me provide a working definition of each activity and an overview of the organization(s) responsible for that activity.

Service Administration is the process of assuring that the services provided through the SMS/800 are (a) provided in a manner that is

¹ DSMI is a wholly owned subsidiary of Bell Communications Research, Inc. (Bellcore). Bellcore formed DSMI on April 29, 1993, to provide centralized support for the provision of SMS/800 Services. The formation of the separate subsidiary was driven by the anticipated need to assure segregation of the costs and revenues associated with the provision of SMS/800 Services by the Regional Bell Operating Companies (RBOCs).

DSMI 000460

consistent with the tariffs and contracts governing those services, and (b) meet the needs and expectations of the users of the system.

Service Administration is the responsibility of the SMS/800 Management Team (SMT²), working in cooperation with the subcontractors utilized by the SMT to provide SMS/800 services.

System Administration is the process of maintaining the SMS/800 system in terms of updating internal table contents, defining and validating user access capabilities and security features, mass change and batch process scheduling, etc.

All System Administration for the SMS/800 is provided, under contract to the SMT, by the SMS/800 Help Desk and the SMS/800 Data Center. SMS/800 Help Desk support is currently provided by Sykes Enterprises, Inc. (SEI). SMS/800 Data Center support is currently provided by Southwestern Bell Telephone Company (SWBT).

Number Administration, and Toll Free number administration in particular, consists of defining guidelines for the assignment and use of numbering resources (Toll Free resources in this case), as well as the definition of procedures to be used in the resolution of conflicts related to numbering issues.

For Toll Free Services, Number Administration is provided by a combination of the FCC and various industry forums under the Alliance For Telecommunications Industry Solutions (ATIS) umbrella. In particular, the SMS/800 Number Administration Committee (SNAC) and the Industry Numbering Committee (INC) provide Number Administration direction for Toll Free Services.

Neither the SMS/800 Management Team (SMT), nor DSMI, acting as the Business Representative of the SMT, has any role in number administration for Toll Free Services.

In your letter of November 21st, you request that the information regarding DSMI's neutrality be provided in a manner that is consistent with the requirements specified in the North American Numbering Council's (NANC's) request for proposals for a new North American Numbering Plan Administrator. For your convenience, those requirements are reproduced as part of this letter, along with the appropriate information addressing DSMI's neutrality.

² The SMT consists of representatives of the RBOCs. The RBOCs were ordered by the Federal Communications Commission (FCC) to jointly provide SMS/800 services, via federal tariff, as part of the Commission's Order in Docket 86-10

"As stated in the Communications Act of 1934 as amended by the Telecommunications Act of 1996 (Sec.251(e)(1)), the FCC is required to 'create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis.'

"Further, as stated in CC Docket No. 92-237, the NANPA 'should be a non-governmental entity that is not aligned with any particular telecommunications industry segment.' "

Clearly, DSMI is not an agency of the United States government, nor is it affiliated with the government of any other country. DSMI meets the requirement to be a non-governmental entity.

"Accordingly, the NANPA and the B&C Agent shall ensure that they comply with the following criteria for assessing neutrality during the Term of Administration:

- 1) the NANPA and B&C Agent may not be an affiliate of any telecommunications service provider(s) as defined in the Telecommunications Act of 1996. 'Affiliate' is a person who controls, is controlled by, or is under the direct or indirect common control with another person. A person shall be deemed to control another if such person possesses, directly or indirectly, (i) as equity interest by stock, partnership (general or limited) interest, joint venture participation, or member interest in the other person ten (10%) percent or more of the total outstanding equity interests in the other person, or (ii) the power to vote ten (10%) percent of the securities (by stock, partnership (general or limited) interest, joint venture participation, or member interest) having ordinary voting power for the election of directors, general partner, or management of such other person, or (iii) the power to direct or cause the direction of the management and policies of such other person, whether through the ownership of or right to vote voting rights attributable to the stock, partnership (general or limited) interest, joint venture participation, or member interest of such other person, by contract (including but not limited to stockholder agreement, partnership (general or limited) agreement, joint venture agreement, or operating agreement), or otherwise;"*